

Australian Foreign Policy, Human Rights in China and the Spiral Model

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In 1997 Australia changed its human rights policy regarding China from its support for resolutions on China at the UN Commission on Human Rights (UNCHR) to the adoption of the bilateral human rights dialogue process. From 1991 to 1997 the UNCHR process had greatly contributed to the Chinese government making human rights concessions such that China could be considered to be in phase three (tactical concessions) of the spiral model of Thomas Risse, Stephen Ropp and Kathryn Sikkink. To progress to phase four (prescriptive status), continued pressures by international and domestic actors are needed so that support and protection is provided to domestic human rights activists. The annual Australia–China bilateral dialogue meetings do not appear to be contributing to those pressures. However, in a limited way given its small scale, the Australia–China Technical Cooperation Program may help to bring about further human rights improvements in China.

From 1989 to 1996 the Australian government supported the annual draft resolution raised at the UN Commission on Human Rights (UNCHR) on China's human rights record.¹ Resolutions on China were first raised in response to the tragedy of the Tiananmen Square massacre in 1989 and the subsequent repression. In 1997 the Australian government stopped supporting the UNCHR resolutions on China and commenced a bilateral dialogue process instead. Other democratic states similarly changed their human rights policies regarding China around this time. The Australia–China dialogue process has largely involved confidential annual discussions between Australian and Chinese officials where some abuses of civil and political rights are raised. Given that these discussions are confidential, their nature and effectiveness are difficult to assess. The centrepiece of the dialogue process has become the more transparent Australia–China Technical Cooperation Program

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¹Except for 1991 when there was no resolution on China sponsored at the UNCHR due to the need of the US government and its allies to minimise China's opposition to a UN Security Council resolution on Iraq (Kent 1999b).

(TCP) which has involved activities conducted with Chinese officials on human rights practices.

This article explores the Australian government's changed human rights policy regarding China since 1997. To assist with this exploration, the five-phase spiral model of Thomas Risse, Stephen Ropp and Kathryn Sikkink (1999) will be used as a framework. The spiral model seeks to explain the phases a state may progress through in response to pressures from a network of domestic and international actors. Adopting a constructivist approach, each phase of the spiral model highlights how a network of domestic and international human rights non-government organisations (NGOs), UN bodies and states promoting international human rights norms may be able to influence a target state's identity, interests and behaviours through particular socialisation processes (Risse and Sikkink 1999). The domestic and international actors promoting these norms are described by Risse et al as a transnational human rights network. In order to be able to assess the impact of a transnational human rights network on a target state, Risse et al. limited the particular human rights to be explored in their research to two core rights—the right to life, or freedom from extrajudicial execution and disappearance, and the right to have freedom from torture, arbitrary arrest and detention. These rights have been largely accepted as universal (Risse and Sikkink 1999, 2), and a focus on such a narrow set of rights avoids the difficulties involved in assessing the impacts of a transnational network on a target state in relation to the entire set of international human rights. The rights to have freedom from torture, arbitrary arrest and detention are also particularly appropriate in an assessment of the Australian government's changed human rights policy regarding China as there have been reports of abuses of these rights in China both before and after 1997, the year this change in policy occurred.

This article will outline the progress of the Chinese government to phase three of the spiral model by 2004. It will highlight that many of the changes in the Chinese government's human rights practices are consistent with those expected of a target state engaging in socialisation processes according to international human rights norms during the first three phases of the model. However, the limitations of the model in explaining the influence of the Chinese government on the methods adopted by many democratic states will also be outlined.

Following on from the discussion of the spiral model and China, the Australian government's changed human rights policy from 1997 will be examined. This will allow for an evaluation of the Australian government's human rights policy in light of the spiral model's findings for transnational network actions necessary to encourage a target state to progress to phase four, prescriptive status. Thus this article will explore whether the Australian government's adoption of the dialogue and TCP approach, instead of its support for resolutions on China at the UNCHR, has contributed to the degree of transnational pressure necessary to encourage the Chinese government to progress to phase four of the spiral model.

The Spiral Model and the Chinese Government²

Many of the changes in the Chinese government's human rights practices, and its responses to its internal and external critics, from the time of the 'anti-rightist' campaign of 1957–58 to 2004 can be explained by the spiral model. By the end of this

²Discussion in this section is based on Fleay (forthcoming).

period, the actions of the human rights network and the Chinese government indicated that the latter had progressed to phase three of the model.

The five-phase spiral model seeks to explain the socialisation of states as defined by international human rights norms promoted by a transnational network. According to the spiral model, phase one begins when there is a marked deterioration in the respect for human rights by a state. If domestic and international human rights NGOs can get information on human rights abuses out of the country, the state can be placed in the international spotlight and the situation can progress to phase two (Risse and Sikkink 1999, 22).

Phase one of the spiral model, characterised by repression and network activation, began in China in the late 1950s when the 'anti-rightist' campaign resulted in a significant increase in the abuses of the rights to freedom from torture, arbitrary arrest, detention and extrajudicial execution. But it was not until June 1989 that the Chinese government progressed to phase two of the model, when the repressive measures taken by the Chinese government in Beijing in response to the Tiananmen demonstrations resulted in the deaths of many. The presence of a significant number of international media in Beijing at the time of the killings meant that images of some of the repression were beamed throughout the world, mobilising a sense of outrage in many countries (Benewick 1999; Chan 1991; Kinnvall 1995; Nathan 2001; Nossal 1993; Salisbury 1992). It was the degree of this international outrage that progressed the Chinese government to phase two, given that the expression of this outrage was far greater than after reports of prior abuses in China.³

In phase two of the model, characterised by denial, information on human rights abuses is disseminated internationally and the lobbying of international human rights organisations and democratic states commences. Attempts to persuade democratic states to speak publicly about the abuses in the target state are made by other transnational network actors. The activities of these actors often result in a denial response from the target state (Risse and Ropp 1999, 251).

The events in China from the latter half of 1989 to 1991 were largely consistent with phase two of the spiral model. The denial phase began immediately after the Tiananmen Square massacre as a result of the international media reports and the mobilisation of international human rights NGOs such as Amnesty International (AI) and Asia Watch. These organisations disseminated reports of abuses in China to UN bodies and democratic states, pressuring them to make further responses to the Chinese government. Democratic states responded to this pressure, and the concerns of their own citizens, by condemning the killings and calling for the Chinese government to cease the repression, and imposing largely symbolic sanctions. A resolution critical of China's human rights practices was raised at the 1990 United Nations Commission on Human Rights (UNCHR) session and other UN human rights bodies, such as the Special Rapporteur on Summary and Arbitrary Executions, the Special Rapporteur on Torture, the Committee Against Torture, the Working Group on Enforced or Involuntary Disappearances, and the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, issued statements concerning the repression (Harding 1992, 263; HRW 1989, 1990, 1991; Kent 1993, 187, 214–15; Kesavan 1990, 671; Nossal 1993, 25–31; Shambaugh 1992, 110; Tessitore and Woolfson 1990, 158; 1991, 153). Internal

³For example, the Chinese government's suppression of the Tibetan independence movement beginning in 1987, including instances of firing into crowds and imposing martial law, did not generate the degree of international outrage that the Tiananmen Square massacre did (Foot 2000, 97–9).

groups and individuals that had been involved in the demonstrations, or later expressed sympathy for them, were targeted by the Chinese government and suffered from further repressive measures (AI 1991; HRW 1990; Kinnvall 1995, 268). However, the Chinese government's internal responses also included attempts to alleviate the suffering caused by economic development programs, arguably the catalyst for the demonstrations, and granting some personal freedoms (Kent 1993, 197–204).

The Chinese government's responses to its external critics included denying that it had carried out human rights abuses, rather than denying the validity of the universal human rights concept itself, invoking the state sovereignty principle and highlighting the past human rights abuses of the colonial powers. It responded to the draft resolution sponsored at the UNCHR in 1990 with vigorous lobbying for a no action motion (Kent 1993, 197–215; Shue 2002, 214). The Chinese government also encouraged the development of its own official discourse on human rights by hosting several conferences on human rights in China and encouraging the publication of articles on human rights (Zhou Wei 1995, 87). In addition, some of those involved in the demonstrations were released and the sentences of some of the others were reduced (Foot 2000, 126–7; Kent 1993, 204, 217–29).

Despite the negative characteristics of this phase, the spiral model still considers the denial phase to be part of effective socialisation as it reflects that at least the state acknowledges its international reputation has been tarnished, and the human rights concept is not usually rejected outright (Risse and Sikkink 1999, 23). The socialisation process in the denial phase consists of instrumental adaptation which is indicated when a state makes some concessions, for example releasing a political prisoner or indicating that they may sign an international agreement. This type of socialisation does not necessarily involve the target state accepting the validity of the human rights norms that transnational actors are accusing them of violating, nor admitting the factual validity of these accusations. Instead, consistent with rationalist explanations, the target state's behaviour is more likely to be motivated by instrumental or material concerns such as bringing about the end of sanctions and public criticisms of its human rights record (Risse and Sikkink 1999, 12).

While it is expected by the spiral model that the target state practises instrumental adaptation in phase two, the Chinese government also began to engage in argumentative discourses during its denial phase. The latter socialisation process involves the target state and its critics engaging in discourses of argumentation and persuasion which is expected by the spiral model no earlier than phase three (Risse and Sikkink 1999, 13). The release of a number of demonstrators from detention, and the reduction of the sentences of some of the others, were concessions made by the Chinese government in 1990 indicating instrumental adaptation since they were made just prior to US decisions on the renewal of China's Most Favoured Nation trade status and whether to oppose World Bank loans to China (Foot 2000, 124–7). Argumentative discourses were evident in the Chinese government's response to the 1990 UNCHR resolution when it argued over the details of the international criticisms of its human rights record, rather than challenging the validity of international human rights norms (Kent 1993, 214–15).

That the Chinese government did engage in both of these socialisation processes during the denial phase, in contrast to Risse et al's expectations, can be explained in part by China's prior engagement with the international human rights regime. By the late 1980s the Chinese government's support of and involvement in various human rights treaties meant that it had already expressed support for at least

some of the international human rights norms in the international arena (Cohen 1987, 537; Kim 1990, 200). Through this involvement, the Chinese government had indicated its understanding that support for international human rights norms was a precondition for being a great power. The desire to be seen as a great power in the international society of states reflected the Chinese government's dominant great power identity. Thus it would have been very difficult for the government to reply to its critics by denying the validity of these human rights norms as this would have challenged its standing as a great power. Instead, the Chinese government felt compelled to argue with its critics about the substance of their criticisms, a characteristic of argumentative discourses.

According to the spiral model, if pressure by the transnational network can be maintained then the target state may feel compelled to make significantly more tactical concessions, for example releasing political prisoners. This signals that phase three of the model has been reached, the phase of tactical concessions (Risse and Sikkink 1999, 24). Once it began to make significant concessions towards the end of 1991, the Chinese government entered phase three of the model. By 1991 pressures from international human rights NGOs and democratic states since 1989 had led the Chinese government to make the concessions of releasing further political prisoners. These pressures had also led to the Chinese government encouraging an internal human rights discourse and increasing its engagement with international human rights debates, including the publication of the government's first White Paper on human rights in October 1991. In addition to promoting the universality of human rights, this paper expressed the Chinese government's human rights priorities including that the right to subsistence was the most important right to be realised before any other rights could be considered (IOSCPRC 1991, 11–12). Therefore, this paper was clearly not only a concession to its critics but also an attempt to influence international debates on human rights priorities. By the end of 1991 the Chinese government had offered perhaps its most significant concessions to date—it had invited Australian and French human rights delegations to visit China and investigate its human rights record on its own soil. This reflected the degree to which the Chinese government was prepared to offer concessions in order to quieten its critics (Foot 2000, 115, 136).

From 1991 to 2004 the Chinese government continued to make some concessions in response to pressures from the transnational human rights network. International human rights NGOs such as AI, Human Rights Watch/Asia (HRW)⁴ and Human Rights in China (HRIC) continued to document and disseminate information on human rights abuses in China and lobby the democratic states and UN bodies to pressure the Chinese government to cease these abuses.⁵ Resolutions on China at the annual UNCHR sessions, except in 1991, were sponsored by many democratic states as their main expression of concern to the Chinese government until their support began to waver in 1997 (HRIC 1998).⁶ This indicated the effectiveness of

⁴Formerly known as Asia Watch.

⁵See the annual reports of these NGOs from 1991 to 2004.

⁶The US government also had other responses at its disposal including, in particular, the annual debate about renewing China's Most Favoured Nation trading status with human rights conditions attached. This continued until 1994 when human rights ceased to be a condition on renewal, although US government leaders continued to raise human rights concerns with their Chinese counterparts during meetings and presidential summits. The US government was one of the few democratic states to continue supporting the sponsorship of resolutions on China after 1997, sponsoring a resolution on China at the 1999, 2000, 2001 and 2004 UNCHR sessions (Dao 2002; Foot 2000, 133–6, 172–5, 194–204; HRW 1993;

the Chinese government's lobbying efforts, particularly using its growing trade relationships with most democratic states, and many of these states adopted China's preferred bilateral human rights dialogue and technical cooperation program approach as the means through which human rights concerns would primarily be expressed (HRIC 1998). Thus the Chinese government had used its economic weight to minimise international disapproval and sanctions.

Consistent with the spiral model's characteristics of phase three, the socialisation processes of instrumental adaptation and argumentative discourses were both evident throughout the 1991–2004 period of the Chinese government's tactical concessions phase. Indications that the Chinese government was participating in instrumental adaptation included the concessions of releasing political prisoners and signing the UN human rights conventions that were timed to coincide with the decision making of some of its external critics, for example on whether or not to sponsor a resolution on China at the UNCHR.⁷ These concessions occurred throughout the 1991–2004 period and were clearly aimed at appeasing external critics and were not indicative of the Chinese government being convinced that it needed to improve its human rights record. Indications that the Chinese government was engaging in argumentative discourses throughout this period included the continued promotion of its preferred interpretations of international human rights norms and debating the substance of its critics' comments by publishing White Papers on human rights and issuing official responses.⁸ Acknowledgements were made in a number of these White Papers that some abuses were being carried out by law enforcement agencies (IOSCPRC 1992, 1997),⁹ and there was a decreasing use of the argument that human rights are an internal matter for a state (Foot 2000, 183–7; IOSCPRC 1991, 1996; Ming Wan 2001, 18).¹⁰

Other indications that China was engaging in a deeper socialisation process than just instrumental adaptation included the introduction of some attempts to improve the independence of the judiciary,¹¹ and the acknowledgements by a number of government officials of the problem of corruption in the legal system and that the workers' protests should be dealt with carefully (HRW 2002; Rosenthal 2003).¹² However, given that these developments were fairly minimal and that there

Kent 1993, 217; 1995, 36; 1999a, 64–77; 1999b; Lampton 1994, 600–13; 2001, 59–60; Lieberthal 2002; Ming Wan 2001, 24, 48–53, 60–1, 79, 101–23).

⁷Details of such concessions can be found in the annual reports of Amnesty International from 1994 to 2003, HRW reports on China and Tibet in 1994, 1998 and 2003 and AI (2003); HRIC (2003, 110); Li Xiaorou (2003); Associated Press (2003); Yardley (2003).

⁸Some of these White Papers can be found in IOSCPRC (1991, 1992, 1996, 1997, 2000a, b).

⁹For example, see the 1992 *Reform and Criminal Offenders in China and Progress in China's Human Rights Cause in 1996* (IOSCPRC 1992, 1997).

¹⁰For example, compare the 1995 White Paper *The Progress of Human Rights in China* with the 1991 White Paper on human rights (IOSCPRC 1991, 1996).

¹¹For example, measures introduced in 2002 included

new disciplinary measures for corrupt or incompetent judges; new educational and competency standards for would-be judges, prosecutors, and lawyers; a code of ethics for prosecutors; the introduction of a chief prosecutor for each case rather than a prosecution committee; a prohibition against firing judges without proper legal procedures; and, as part of the effort to eliminate corruption, annual internal disciplinary court inspections. (HRW 2003)

¹²For example, in 2001 the Vice-President of the Supreme People's Court admitted that there was corruption in the legal system and the Supreme People's Procuratorate admitted that the CCP interfered in 'sensitive cases'. There were also reports by 2003 of police and government official awareness that workers' demonstrations needed to be handled with great care as they had much popular support.

continued to be consistent reports of human rights abuses by 2004, the Chinese government could not be considered to be engaging increasingly more in argumentative discourses than in instrumental adaptation throughout the 1991–2004 period. This is in contrast to the expectations of the spiral model as a target state progresses towards phases four (prescriptive status) and five (rule-consistent behaviour) (Risse and Sikkink 1999, 29–33).¹³

That the Chinese government was not engaging increasingly with argumentative discourses throughout 1991–2004 can be explained in part by the government's dominant and continuing great power identity motivating attempts to silence its critics and largely deny that it had carried out abuses. The Chinese government's great power identity was also reflected in its promotion of its engagement with international human rights forums, thus acknowledging that being a great power included engaging in these international debates. China's domestic structure also helps to explain why the Chinese government was not showing significant progress to phase four by 2004. Given that this structure has been dominated by a state where the top leadership has overwhelmingly been the source of policy innovations, it is necessary for the transnational human rights network to access the top leadership to have an impact on state policy since civil society groups supportive of human rights norms are unlikely to have the necessary influence. This access had only been achieved to a limited extent by transnational human rights network actors by 2004, and it was clear that the top leadership had not adopted international human rights norms to the extent expected for progress to be made to phase four (Risse-Kappen 1994).¹⁴

Another factor contributing to the Chinese government's stalled progress to phase four, and also a reflection of its dominant great power identity, has been the government's ability to influence the enforcement mechanisms of international human rights norms. The behaviour of the Chinese government differs most from that expected of a target state by the spiral model in the actions it has taken to influence understandings of international human rights norms and their enforcement mechanisms, and the level of success of these efforts. The most significant example of the Chinese government's ability to influence the way international human rights norms are enforced was evident from the late 1990s. By 1998 much of the state support for resolutions on China at the UNCHR had ceased and China's preferred approach to human rights in international relations, the bilateral dialogue, had been adopted by most democratic states (HRIC 1998). The Chinese government's lobbying efforts had finally been successful almost a decade after the Tiananmen

¹³Phase four of the spiral model (prescriptive status) is reached when target states use international human rights norms in human rights discussions and the validity of these norms is no longer contested. Indicators include the ratification of international human rights conventions and their optional protocols, the reflection of human rights norms in the constitution and domestic legislation, the establishment of human rights complaints structures, criticisms of human rights no longer being labelled outside interference in domestic matters, human rights dialogues conducted with the state's critics, and apologies and compensation being given to victims of abuses. Over time phase five (rule-consistent behaviour) is expected to be reached if there is continued domestic and international pressure on a target state to alter its human rights practices so that they reflect international human rights norms and are supported by the rule of law. The dominant mode of socialisation here is institutionalisation and habitualisation, where international human rights norms are no longer contested by the target state, institutionalised within domestic practices, and supported by the rule of law (Risse and Sikkink 1999, 29–33).

¹⁴For discussion on the declining role of the state in China see Shambaugh (2000); Naughton and Yang (2004).

Square massacre to relegate discussions on its human rights practices from public international forums to confidential, behind-closed-doors meetings between government officials. Clearly the Chinese government has had a significant influence over some of the structures that promote international human rights norms, and in the process it has been able to influence most democratic states in relation to how these norms should be enforced. This is consistent with Rosemary Foot's conclusion that the Chinese government had not only become enmeshed in the international human rights regime but had also been able to influence some of its enforcement mechanisms (2000, 270–2). It is also consistent with Ann Kent's conclusion that the Chinese government had become somewhat socialised into this regime at the same time as it had attempted to influence the operations of the UN human rights bodies (Kent 1999a, 242).

This finding highlights a shortcoming of the causal claims of the spiral model. It is a central claim of the spiral model that the target state's identity, interests and behaviours are increasingly influenced by ideational factors as it progresses through the model's phases (Risse and Sikkink 1999, 7). However, there is no one-sided chain of cause and effect impacting on the target state. Instead there is a constitutive relationship between the target state and international human rights norms—the identities and interests of the state are in a mutually constitutive relationship with international human rights norms. The model only conceptualises part of this relationship, the influence of these norms on the identities, interests and behaviours of a target state. It does not conceptualise the influence of the target state on international human rights norms.¹⁵

Despite this shortcoming of the spiral model, it has still provided a valid explanation of many of the changes in the Chinese government's human rights practices from the late 1950s to 2004. Its expectations of how a target state can be encouraged to progress to phase four will therefore be used in order to examine the Australian government's changed human rights policy since 1997. According to the model, for the transnational human rights network to be able to apply consistent pressure on the Chinese government to bring about sustained human rights improvements such that progress to phases four and five is likely, both domestic and international actors in the network need to be active. This means that not just international human rights NGOs and UN human rights bodies but also democratic states and Chinese opposition groups must be willing and able to consistently pressure the Chinese government. The spiral model expects that the most important impact transnational human rights network pressure can have in phase three is to facilitate the mobilisation of domestic opposition groups. Greater international attention to human rights abuses in a target state is expected to help strengthen and encourage the development of domestic human rights groups and activists by legitimising their calls for human rights improvements, and providing them with some protection through this attention (Risse and Ropp 1999, 246; Risse and Sikkink 1999, 25). Whether the adoption of the bilateral human rights dialogue approach by democratic states such as Australia provides domestic opposition groups with this support is the focus of the remainder of this article. This will be explored by examining the Australian government's changed human rights policy regarding China since 1997.

¹⁵For further discussion on this aspect see Fleay (forthcoming).

The Australia–China Human Rights Dialogue

Prior to the Tiananmen Square massacre in Beijing in 1989, the Australian government and other democratic states made few responses to reports of human rights abuses in China.¹⁶ The images of the protesters in Tiananmen Square and the subsequent killings by Chinese troops beamed to an international audience in 1989 meant that democratic states could no longer ignore reports of abuses by the Chinese government. After initially imposing mostly symbolic sanctions on China, and the Australian government sending two human rights delegations and the French, Austrian, British and Swiss governments also sending human rights delegations to China in 1991 and 1992 (Commonwealth of Australia 1991, 1992; Foot 2000, 115, 136; Kesavan 1990, 671; Nossal 1993, 25–31; Shambaugh 1992, 110), the most prominent expression of many democratic states over the following years became support for resolutions critical of the Chinese government's human rights record at the UNCHR.

In response to the resolutions, each year the Chinese government raised a no-action motion and was successful in getting all of these motions passed, except for the one raised in 1995.¹⁷ The Chinese government also lobbied vigorously leading up to and throughout the annual UNCHR sessions in attempts to prevent support for the resolutions. By 1997 this lobbying began to create a fracture in the previous consensus of democratic states which had supported the UNCHR resolutions. Most of these states ceased to support the resolutions and instead commenced or resumed bilateral human rights dialogue talks with the Chinese government (Foot 2000, 203–4). The Australian government was one of these states, having concluded in 1997 that supporting a resolution on China at the UNCHR was not achieving anything and no longer in Australia's interests. Contributing factors to this decision were the growing importance of the Australia–China trade relationship, and a number of sources of tension between China and Australia in the early to mid-1990s such that the Australian government became predisposed to adopting a more conciliatory approach on issues of contention such as human rights.¹⁸ A human rights dialogue between Australia and China was thus proposed by the Australian government, with the proviso that it reserved the right to publicly criticise China when it was deemed to be necessary. To give further credibility to Australia's change in policy, the government offered to fund a development assistance program focused on human rights (Official Involved in Some of the Australia–China Human Rights Dialogue Meetings 2002).

¹⁶For discussion on the Australian government's approach to human rights in China prior to 1989 see Dutton (2003).

¹⁷In 1995 the vote on no-action was tied, perhaps because of considerable US lobbying in support of the resolution in the wake of the Clinton administration's removal of the link between human rights and China's Most Favoured Nation trading status. For the first time a resolution on human rights in China went to the vote although this subsequently resulted in the resolution being defeated by one vote. This was due to China's successful lobbying of Russia which subsequently changed its support from the Western-led resolution to China's opposition to it (Human Rights in China 1998; HRW 1996; Ming Wan 2001, 48, 115).

¹⁸Sources of tension included Prime Minister Howard and Foreign Minister Downer both meeting the Dalai Lama on his 1996 visit to Australia, despite strong Chinese government objections, the Australian government's scrapping of the Concessional Finance Facility (a scheme that offered Australian government assistance to projects in particular developing countries, including China), the growing trade relationship between Australia and Taiwan, and Prime Minister Howard's promotion of a closer relationship between the United States and Australia (Johnston and Stokes 1997, 295–6; Mackerras 1997, 218–24).

In March 1997 Prime Minister John Howard raised the issue of regular human rights dialogues between Australia and China during a visit dominated by economic relations to Beijing (Downer 1997a). The Chinese government agreed and 'hinted that resumption of talks would be contingent on Australia's attitude towards the annual UN resolution condemning Chinese human rights abuses' (Johnston and Stokes 1997, 295; Tingle 1997). No further resolutions on China at the UNCHR have since been supported by Australia (Kent 2001, 600).¹⁹

These actions were consistent with the general changes brought about by the Howard government to Australia's human rights policy in 1997. Foreign Minister Alexander Downer made it clear that the implementation of Australia's human rights policy would be guided by the need to be practical about what Australia could achieve regarding human rights issues. The 1997 Australian government White Paper on Foreign and Trade Policy highlighted that the 'objective of human rights policy should be to make a practical difference, not to posture' (DFAT 1997, 14). In relation to China, the Australian government wanted a policy that focused on assisting the Chinese to make concrete improvements in the respect for human rights, and one that significantly downplayed the use of public criticisms. Downer also announced that Australia needed to ensure its 'human rights concerns fit with Australia's interest in maintaining security and enhancing prosperity' (Downer 1997b). This point was made even clearer in the Australian White Paper where it is stated that '[l]inking human rights to trade serves neither Australia's trade nor its human rights interests' (DFAT 1997, 13). This continued the view held by Australian governments throughout the 1990s that human rights and trade 'were quite separate from each other' (Mackerras 1996, 4), despite Downer's statements that human rights were 'an inseparable part of Australia's overall foreign policy' (Downer 1996, 1998) and central to the government's foreign policy (Downer 2000).

In the shadow of a foreign policy emphasising good trade and economic relations with China, the bilateral dialogue process between Australia and China commenced in 1997. The first session of the Australia–China dialogue talks was conducted in August 1997 in China between officials from the Department of Foreign Affairs and Trade (DFAT), the Attorney-General's Department and AusAID, and China's Ministry of Foreign Affairs. Issues raised included the use of the death penalty, torture while in custody, forced labour for reform and re-education purposes, illegal evidence at trials, access to legal assistance, detention and prisons, and appeals processes (DFAT 1999a). The protections of religious freedoms and cultural identity and 'the Australian community's interest in Tibet' were also raised (DFAT 1998). After the talks, the Australian delegation met with officials from various Chinese government agencies (DFAT 1999a). Private comments from some of the Australian participants at the dialogue included that 'their dialogue was held at a "more senior level" than that of the Europeans, that it might presage some breakthrough on *laojiao* (re-education through labour) and that it had the advantage of establishing continuity' (Kent 2001, 617). These comments came in the midst of

¹⁹There have been some public expressions of concerns regarding human rights in China by the Australian government since 1997. However, these have been largely limited to statements made at the UNCHR and the UN General Assembly (UNGA) which have not attracted the publicity and therefore have not had the lobbying power that support for resolutions on China at the UNCHR did. For mention of these public statements, see DFAT (2004a).

much NGO criticism of the dialogue process, centring on the private nature of the talks and that only government officials were involved. In response to some of this criticism, in 1998 Australian officials persuaded their Chinese counterparts to agree to a formal meeting with Australian NGOs. However, the meeting was criticised by NGO participants for being too short and including constraints on the questions that could be addressed to the Chinese (Amnesty International Australia Government Liaison Group Member 2001; Kent 1999b, 33).

The main outcome of the first round of dialogue talks was a Technical Assistance Program (later renamed the Human Rights Technical Cooperation Program—TCP) that aimed to strengthen the protection of human rights in China and to which the Australian government committed A\$300,000. Foreign Minister Downer outlined in August 1997 that the TCP was intended to ‘address human rights matters in China in an open and constructive way’ in order to ‘achieve practical outcomes’ (DFAT 1999b). The TCP would largely involve the design and implementation of training activities with officials of various Chinese government agencies. The small-scale program intended to include activities that would immediately impact on specific organisations and human rights areas, and even though it was acknowledged that the program would only ever have a modest impact, the intention was that it would have a long-term impact on human rights in China (HREOC 2001, 1). In the face of NGO criticisms of the dialogue talks, and with its emphasis on achieving practical outcomes, the TCP became the centrepiece of the Australian government’s human rights policy regarding China.

Dialogue meetings between Chinese and Australian government officials have continued on an annual basis since the first meeting in 1997. Each year the number of Chinese agencies represented at the dialogue meetings has increased, indicating at least a growing engagement with the dialogue process by Chinese agencies. Australian representatives continue to be largely officials from government agencies but a number of Australian MPs and one China and human rights expert have participated in various dialogue meetings.²⁰ Specific issues raised by Australian delegates in the dialogue talks have covered a wide range of human rights concerns such as legal reform, ethnic and religious minority rights, women and children’s rights, infanticide and abortion, poverty elimination, the death penalty, the reform and re-education through labour systems, China’s ongoing negotiations with ICRC, China’s accession to the major UN human rights conventions, and torture and arbitrary detention reports including those on members of Falun Gong, China Democracy Party and non-official workers’ groups and churches (Amnesty International Australia Government Liaison Group Member 2001; DFAT 2004a). From the second round of talks, the dialogue also included visits to Australian and Chinese agencies with responsibilities for human rights, including NGOs in Australia, by the visiting delegation (DFAT 1999b). By the 2000 dialogue talks, the Chinese delegations were beginning to ask questions about Australia’s human rights record for the first time.²¹ The most sensitive and potentially contentious part of the dialogue meetings has been the raising of individual cases of reported human rights abuses with the

²⁰By 2001 representatives of Chinese agencies other than just the Ministry of Foreign Affairs were participating in the dialogue talks when they were held in China DFAT (2004a).

²¹In 2000 these included questions on Aboriginal rights, women in the workforce, and Australia’s ‘refutation of a UN Committee on the Elimination of Racial Discrimination (CERD) report on Australia’s treatment of indigenous Australians’ (Kent 2001, 617).

Chinese delegation. This has largely involved Australian officials forwarding a list of individuals the Australian government is concerned about to the Chinese delegation prior to discussions, highlighting the difficulties in raising such concerns with Chinese officials during private talks. Up until the 2004 dialogue talks, the Chinese response would be a prepared statement about these individuals being read out in the margins of the dialogue meeting. In 2004 this progressed to the Chinese delegation handing over a written response to Australian officials (DFAT Officials 2001; DFAT Official 2004, 2005), indicating some increased willingness by Chinese officials to engage in the transfer of information on individuals of concern.

Consistent with the Chinese government's preference for privacy in human rights discussions, the details of these meetings have remained largely confidential. There is no parliamentary reporting requirement and little involvement of NGOs in the meetings, in contrast to the two Australian human rights delegations in the early 1990s (Kent 2004, 153). Therefore, little is known about the nature of the discussions between officials at these meetings and what outcomes, if any, result from the dialogue process. What has been reported is not optimistic. For example, a 2004 report on Australia's dialogue talks with China noted that the Chinese government's attitude to all of its human rights dialogue talks was reflected in its refusal 'to engage in planning the talks, sending along more junior officials, or changing the days at short notice' (Armitage 2004).²² A more positive development was the Chinese delegation agreeing to hold a brief meeting with a select range of Australian NGOs before the 2004 Australia–China dialogue talks. Australian NGO officials present at the meeting described it as 'very positive' and hoped for more discussions in the future (Australian NGO Official 2005). Whilst this is a welcome development, there still remains little in the public realm about the dialogue talks, and thus it is very difficult to assess their effectiveness in pressuring the Chinese government to bring about improvements in human rights practices in China. Going on what is known, it is difficult not to conclude that the dialogue talks cannot compare with public pressures placed directly on more senior Chinese government officials who hold much more power to bring about human rights improvements within China.

The Australia–China TCP²³

What is known about the Australia–China human rights dialogue talks is that the most cooperative part has been the discussions on the progress of the TCP, its objective being to 'strengthen the administration, promotion and protection of human rights in China' (AusAID 2004). At each dialogue meeting Australian and Chinese officials have approved the annual progress made by the TCP and agreed to its gradual expansion. By May 2004, 40 TCP activities had been implemented, 15 activities per year were planned for the 2004–05 period, and Australian government funding for the TCP had risen to A\$1.6 m per year (HREOC Official 2005). The activities of the TCP have been designed and conducted in conjunction with Chinese agencies and most are seminar or workshop forums that are planned to lead to more practical-based training. The 'open door' policy in China focusing on

²²For further discussion on the shortcomings of dialogue talks see HRIC (1998).

²³Much of the information discussed in this section is from Legal and Human Rights Consultant to HREOC (2002); HREOC Officials (2001); HREOC Official (2002, 2005).

trade and attracting foreign investment has clearly highlighted the need for a legal system to be developed to support trade. The Chinese government's commitments to bring about such legal developments, and the TCP's emphasis on judicial and legal reform, though not in any areas related to trade, is likely to have encouraged the cooperation of most of the Chinese agencies involved with the program.

At the beginning of the TCP, the prevalent view of Chinese officials was that their agencies did not have human rights issues that needed to be dealt with. According to Australian officials involved with the program, this view has largely been replaced by an acknowledgement that there are administrative and judicial issues that need to be addressed and that Australia may be able to assist. These concerns do not tend to be couched in the language of human rights by the Chinese, and the TCP managers rarely use the term 'human rights' in response, but a sensitivity to the use of 'human rights' is thought to be decreasing.

Another indication of support for the program by Chinese agencies is that after initial suspicions that the Westerners were just going to be critical of them, most Chinese officials involved in the TCP progressed to being supportive of the program. By the end of 2001 some of the Chinese agencies participating in the TCP also wanted greater numbers of activities than the Australian program could manage. This could mean there is a desire by these Chinese agencies to establish relationships with external bodies for networking purposes, not necessarily for the purpose of improving the human rights aspects of their operations. This notwithstanding, however, the TCP has at least developed to an extent where many of the Chinese officials involved are willingly engaging in discussions on human rights issues.

Activities in the TCP have largely focused on civil and political rights and included a three-month course on human rights in Australia; visits to Australian human rights and legal institutions by delegations from the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Justice; a civil society seminar in China on the role that government and NGOs can play in developing social policy; training in UN human rights reporting; legal training on domestic violence; training for Chinese procurators on the protection and enforcement of human rights in the criminal justice process; training for Chinese judges on judicial ethics; training on Australian correctional procedures and the rights of vulnerable prisoners; training on police ethics and accountability; and the attendance at an international law conference in Australia by Ministry of Foreign Affairs officials. One of the few activities focused on economic and social rights was a seminar in China on the education and health rights of minority peoples. After initial discussions between Chinese agency officials and Australian experts in the relevant human rights issues (including Australian government employees as well as experts such as representatives of NGOs, community groups and agencies, and academics), training workshops have been devised and largely conducted in various regions of China. The numbers of Chinese participants in these workshops have ranged from nine Chinese officials at the three-month human rights course in 1999 to two hundred judicial officials from throughout China in Beijing at a workshop on writing reasoned judgements (DFAT 2004b).

It has been difficult to assess the effectiveness of the TCP beyond the evident willingness of most cooperating organisations to engage in the program. Based on reports from Australian presenters in TCP activities, it seems clear that most Chinese participants have been actively engaged and highly motivated to learn in activities, putting

much effort into both preparing for and participating in them (Facilitator of the Short Term Study Awards 2002; Legal and Human Rights Consultant to HREOC 2002; One of the Facilitators of the Criminal Justice Process Workshops 2002). But this is not an indication of the degree to which the contents of the activities are taken back to the cooperating organisations and used to modify practices such that human rights are promoted and protected. However, it has recently been agreed that a formal evaluation of the program will be conducted by an independent party. This is a welcome move that will hopefully lead to a comprehensive assessment of the effectiveness of the TCP (HREOC official 2005).

One aspect of the TCP that can currently be assessed is whether the program provides human rights NGOs and activists in China with some degree of support. Most of the TCP activities have engaged with Chinese government officials only. Those that have included Chinese NGO representatives have been from officially sanctioned NGOs such as the All-China Women's Federation, the Chinese Academy of Social Sciences, the UN Association of China and the Foundation for Human Rights Development, and a number of community representatives relevant to the issues discussed for some activities. Thus the TCP is a program that engages largely with the officials of Chinese government agencies, some of whom may well be potential reformers. But it does not focus on engaging with human rights activists, non-official NGOs or opposition groups in China, and therefore no direct support is provided by the TCP to these groups. A more promising aspect of the TCP is its engagement not only with middle-level Chinese officials but also with a number of senior officials.²⁴ This indicates a level of support for the TCP by at least some senior Chinese government officials, providing the program with the potential to influence and support potential reformers within the Chinese government.

In terms of the topics discussed in TCP activities, some of these are directly relevant to the two core rights that are the focus of the spiral model. For example, training activities provided for groups of Chinese procurators on the protection and enforcement of human rights in the criminal justice process included discussion on the issue of confessions extracted through the use of torture (One of the Facilitators of the Criminal Justice Process Workshops 2002). Discussion of such topics directly addresses some of the human rights abuses suffered by many who are detained in China, including human rights activists. However, once again, given the lack of assessment of outcomes of such training so far, it is difficult to know whether such discussions are bringing about any improvements in human rights practices.

The Australian Government and Transnational Human Rights Network Pressure

The spiral model has provided a valid explanation for many of the changes of the human rights practices of the Chinese government and its responses to its external and internal critics from the time of the 'anti-rightist' campaign in 1957–58 to 2004. The aspect of the Chinese government's practices over this time period that cannot be explained by the spiral model relates to the influence of the Chinese government over some of the enforcement mechanisms of international human rights

²⁴For example, a number of Chinese Vice-Ministers visited Australia April–June 2005 to participate in TCP planning discussions (HREOC Official 2005).

norms. Thus by 2004 the Chinese government and the transnational human rights network had taken actions largely consistent with those expected of such actors in phase three of the spiral model. The Chinese government had received enough pressure from the network of international NGOs, democratic states, UN bodies and domestic activists to engage in the socialisation processes of instrumental adaptation and argumentative discourses, resulting in the government making various human rights concessions.

In the wake of the Tiananmen Square massacre in 1989 and until 1997 the Australian government had been an active member of the transnational human rights network. In particular, the Australian government had imposed relatively symbolic sanctions in the aftermath of the massacre, sent two human rights delegations to China in 1991 and 1992, and actively supported resolutions on China at the UNCHR. But by 1997 the Australian government had ceased its support for the high-profile criticism of the UNCHR resolution process in the case of China. Instead, it was promoting the Chinese government's preferred mode of human rights diplomacy, the dialogue approach, characterised by private meetings between Australian and Chinese officials and the small-scale human rights training activities of the centrepiece of this approach, the TCP.

According to the spiral model, for a target state to be encouraged to progress to phase four (prescriptive status) continued pressures need to be placed on the state by transnational human rights network actors such that some degree of support and protection is provided to domestic opposition groups promoting human rights. It is not at all clear that the annual human rights dialogue talks involving Australian and Chinese government officials have been providing this sort of support or protection, beyond providing an occasion for lists of individuals of concern to the Australian government and written responses from Chinese officials being exchanged. However, the Australia–China TCP, the centrepiece of the Australian government's human rights policy regarding China, may hold some potential to contribute to the pressures needed to be made by the transnational human rights network in order to encourage the Chinese government to progress to the prescriptive status phase.

The TCP has engaged with middle-level and a number of senior Chinese government officials, some of whom may be potential reformers, in discussions on human rights issues. This could lead the TCP to making a positive contribution to 'strengthen[ing] the administration, promotion and protection of human rights in China' (AusAID 2004). However, at present, a number of factors limit the extent of any such contribution. Despite increases in funding, numbers of annual activities and support from cooperating organisations since the beginning of the TCP, it remains a relatively small-scale program of human rights training activities in China. In addition, TCP activities have so far engaged predominantly with Chinese government officials and representatives of officially sanctioned NGOs, and not with non-official NGOs or human rights activists in China. The potential of the TCP to bring about human rights improvements in China could be improved with the development of activities that engage with these NGOs and activists.

Further research into and assessment of the TCP is also needed to further advance this potential. The planned formal evaluation of the TCP recently agreed to is a promising development. This evaluation could build on studies already completed on legal projects organised by aid donors to China (Woodman 2004), and Australian aid programs in general (FitzGerald 2004). These have highlighted shortcomings that may also be present in the Australia–China TCP, including a lack of understanding of the

Chinese legal system and its impact on human rights (Woodman 2004) and the need for more engagement with senior Chinese government officials and ministers who are willing change agents (FitzGerald 2004, 139–41). Further investigation into these areas in particular is warranted.

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